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No. 88

In the Supreme Court of the United States

OCTOBER TERM, 1963

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

vs.

FRUIT & VEGETABLE PACKERS & WAREHOUSEMEN, LOCAL 760, and JOINT COUNCIL NO. 28 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*.

BRIEF OF CHARGING PARTY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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THE ARGUS PRESS, SEATTLE

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of the Case	2
A. Board's Conclusion and Order	2
B. Decision of Court of Appeals	3
Reasons for Granting the Writ	4
A. The Issue Is of National Importance	4
B. The Court of Appeals Overlooked the Significant Statutory Language	11
C. The Decision Will Affect the Construction and Application of All of Section 8(b)(4)(ii)	13
D. The Court Was Beguiled by Irrelevancies	16
E. The Court's Constitutional Reservations Would Severely Hamper Congress in Keeping the Channels of Interstate Commerce Open	16
Conclusion	18
Appendix A	19
Title 29, U.S.C.A. § 158(b)	19
Title 29, U.S.C.A. § 160(b), (c) and (l)	21
Appendix B	23
II Legis. Hist. 1616(1-3)	23

TABLE OF CASES

Bakery & Pastry Drivers & Helpers Local v. Wohl; 315 U.S. 769 (1942)	17
Brotherhood of Teamsters v. Vogt, 354 U.S. 284 (1957)	16
Cuneo v. Carpenters Local No. 15 (D.C., N.J., 1961) 197 F.Supp. 662	10
Hughes v. Superior Court, 339 U.S. 460	16
NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760, et al., 308 F.2d 311; 132 NLRB 1172	1

Page

NLRB v. Garment Workers Local 155 (CA-2, 1959) 267 F.2d 916 ..... 14, 15
NLRB v. United Construction Workers (CA-4, 1952) 198 F.2d 391 14
Penello v. Teamsters, Local 557 (D.C., Md., 1962) 45 Labor Cases ¶ 17,657 10
Perfection Mattress & Spring Co., 129 NLRB 1014 .. 18
Printing Specialties & Paper Converters Union v. LeBaron (CA-9, 1948) 171 F.2d 331 14
Sheet Metal Workers v. NLRB (CA-D.C., 1961) 293 F.2d 141 14

STATUTES

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq* 2
§ 8(b)(4) 11, 17
§ 8(b)(4)(i) 15
§ 8(b)(4)(ii) 3, 11, 13, 14
§ 8(b)(4)(ii)(A) 13
§ 8(b)(4)(ii)(B) 3, 4, 11, 14
§ 8(b)(4)(ii)(C) 13
§ 8(b)(4)(ii)(D) 13
§ 8(b)(4)(C) 15
§ 10(b) 16
§ 10(c) 9
§ 10(l) 10
Title 29 U.S.C.A. § 158(b) 19
Title 29 U.S.C.A. § 160(b), (c) and (l) 21

MISCELLANEOUS

President's Message (Jan. 28, 1959), I Legis. Hist. pp. 81-82 4-5
H.R. Bill 4474, I Legis. Hist. 254 5
H.R. 7265, I Legis. Hist. 595 5
H.R. 8400, I Legis. Hist. 681 ..... 5, 11
Senate Bill 748, § 503, I Legis. Hist. 142 5

Page

Senate Bill 1384, I Legis. Hist. 327 ..... 5, 11

Senate Report No. 187 on Senate Bill 1555, the Kennedy-Ervin Bill, I Legis. His. 474-475 5-7

Summary Analysis of Conference Agreement as to Title VII—Taft-Hartley Amendments, II Legis. Hist. 1712 ..... 11, 12

Rules and Regulations of NLRB, § 102.9 16

I Legis. Hist. 328 11

I Legis. Hist. 619 11

II Legis. Hist. 1193(3) 7

II Legis. Hist. 1426(3) 8

II Legis. Hist. 1471(1)(2) 10

II Legis. Hist. 1615(1-3) 23

II Legis. Hist. 1712 12

II Legis. Hist. 1720 12

II Legis. Hist. 1734 12

II Legis. Hist. 1829(1) 8

II Legis. Hist. 1833(1) 9

II Legis. Hist. 1857(2) 9

Index, Legis. Hist. XXIII 7

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No. 921

BRIEF OF CHARGING PARTY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

By letters dated April 29, 1963 and May 3, 1963, from the Clerk of this court, counsel for the charging party were invited to submit a brief in support of the petition for certiorari filed in this case by the National Labor Relations Board. They are grateful for this opportunity because they believe the questions presented by the petition to be of sufficient national interest to warrant granting the petition.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A of Petition, pp. 19-31) is reported at 308 F.2d 311. The findings of fact, conclusions of law and order of the Board (R. 38-50)[1] are reported at 132 NLRB 1172.

[1] "R" refers to the joint appendix filed in the court below.

JURISDICTION

The jurisdictional facts are correctly set out on page 2 of the Petition.

QUESTION PRESENTED

The question presented by the Petition is well stated on page 2 of the Petition and is repeated here in *haec verba* for the sake of continuity and convenience.

> "Section 8(b) (4) (ii) (B) of the National Labor Relations Act, as amended, makes it an unfair labor practice for a labor organization 'to threaten, coerce, or restrain any person,' where an object is to force him to cease doing business with another person. A proviso excepts 'publicity, other than picketing * * * as long as such publicity does not have an effect' on deliveries.
>
> "The question presented is whether picketing at a retail store, urging customers of the store not to purchase products which the store has obtained from an employer with whom the union has a primary dispute, constitutes a 'threat, coercion or restraint' within the meaning of this section, absent a showing that the picketing in fact inflicted any economic injury upon the store."

STATUTE INVOLVED

The statute involved is the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq.*) the pertinent provisions of which are set forth in Appendix A of this brief.

STATEMENT OF THE CASE

The charging party adopts the statement of facts in the Petition.

A. Board's Conclusion and Order

On August 24, 1961, the Board entered a decision and order finding that the Union had committed an unfair

labor practice within the meaning of Section 8 (b) (4) (ii) (B) of the Act (R. 38), and ordered the Union to cease and desist from this practice (R. 48). This order was based on the Board's conclusion that picketing Safeway Stores for the purpose of forcing Safeway Stores to cease doing business with the Tree Fruits employers was a "threat, coercion or restraint" within the meaning of Section 8(b)(4)(ii)(B), and hence, an unfair labor practice within the cited section of the Act.

B. Decision of Court of Appeals

As pointed out by Petitioner, the Court of Appeals set aside the Board's order, and remanded the case to the Board for further proceedings.

The Court of Appeals acknowledged that the legislative history of the statute tended to support the Board's construction of it, but thought that the language of the statute did not sustain the Board's construction. The Court of Appeals concluded "... the most plausible reading to be that § 8 (b) (4) (ii) outlaws only such conduct (including picketing) as in fact threatens, coerces or restrains secondary employers, and that the proviso is intended to exempt from regulation 'publicity other than picketing' even though it threatens, coerces or restrains an employer" (Petitioner's App. A. p. 25).

This reading of the statute requires the Board to look to the *effect* of the picketing on the secondary employer, as the Court of Appeals invited the Board to do in this case, in order to find a violation of the statute.

The court feared lest the Board's reading of the

statute, whereby the Board need look only to the conduct and the object of the conduct, and not attempt to measure the effect of the conduct, would raise constitutional difficulties "by no means minimal," and which the court "would be hard-put" to resolve in favor of constitutionality (R. 27, 29).

REASONS FOR GRANTING THE WRIT

A. The Issue Is of National Importance

This is the first case to reach this court involving the Landrum-Griffin amendments to the National Labor Relations Act, and squarely presents an issue of interpretation of the secondary boycott section, 8 (b) (4) (ii) (B), which is of paramount importance to industry and labor in knowing what conduct is lawful and what is not, as well as being an issue of importance in the administration of the Act.

The extent of the Congressional debate over this section indicates the importance attached to the secondary boycott problem by industry and labor and the careful consideration bestowed on it by the members of both houses of Congress and the conference committee.

The message of the President of the United States, delivered January 28, 1959, Transmitting a 20 Point Program to Eliminate Abuses and Improper Practices in Labor-Management Relations, cited the need for federal legislation "to protect the public and innocent third parties from unfair and coercive practices, such as boycotting and blackmail picketing." The President said:

> "I recommend legislation—
>
> * * * To amend the secondary boycott provisions of the National Labor Relations Act so as to cover

the direct coercion of employers to cease or agree to cease doing business with other persons; union pressures directed against secondary employers not otherwise subject to the act * * *." (I Legis. Hist. p. 81-82)

Secondary boycott prohibitions were the subject of Section 503 of Senate Bill 748, I Legis. Hist. 142; H.R. Bill 4474, I Legis. Hist. 254; Senate Bill 1384, I Legis. Hist. 327; H.R. 7265, I Legis. Hist. 595; and H.R. 8400, I Legis. Hist. 681.

Senate Report No. 187 on Senate Bill 1555, the Kennedy-Ervin bill relating to regulation of union funds promoting union democracy, clarifying the "no man's land," and curbing activities of middlemen, but containing no amendments to the unfair labor practice section of the Taft-Hartley Act, included minority views which ultimately prevailed in the Congress. These minority views included the following:

"The records of the National Labor Relations Board show that from the enactment of Taft-Hartley in 1947 until the present, 34 per cent of the secondary boycott cases coming to the Board involve the Teamsters Union which represents about 10 per cent of all of the members of organized labor. Thus, the figures demonstrate, that like minority picketing, the secondary boycott is a favorite device of the Teamsters, and is used by them at least three and one-half times as frequently as it is by any of the rest of the labor movement.

[Here the Teamsters are again, the respondents in the instant case.]

"The basic justification for banning secondary boycotts is to protect genuinely neutral employers

and their employees, not themselves involved in a labor dispute, against economic coercion designed to give a labor union victory in a dispute with some other employer. * * *

"The major loopholes in the present ban on secondary boycotts are:

"(1) *Coercion of employers*—Present law makes it an unfair labor practice for a union or its agents to urge the employees of an employer to refuse to perform work for the purpose of compelling their employer to cease doing business with some other person. This provides the biggest loophole in present law. The prohibition is against the threatening or urging of the 'employees' of the other employer. Nothing is said about urging or persuading the employer of the secondary employees. Thus a union having a dispute with or attempting to organize the employees of employer A can go directly to employer B, who either uses employer A's products or supplies employer A with raw materials, and threaten employer B with a strike or picket line if he continues to do business with employer A. If the union happens to be the bargaining agent for the employees of B, it takes little persuasion of B to get him to stop doing business with A. B does not want trouble with the union with which he has a contract and anyway A is only one of his many suppliers or customers. So B readily succumbs to the union pressure and tells A he no longer wishes A's products or will no longer supply raw materials to A, and in so doing no one has violated present law. But look at the situation of employer A. Perhaps B is his primary customer or supplier. His alternative is to yield entirely to the union's demands, force his employees to join the union, or go out of business. Countless examples

of actual cases corresponding to this hypothetical have been presented to congressional committees in various hearings since 1947.

> "The bill, S. 748, meets this problem by amending section 8 (b) (4) of the present law to make the restriction apply to 'threaten, coerce, or restrain any person engaged in commerce * * * ' as well as 'induce or encourage any individual employed by any person.' " (I Legis. Hist. 474-475)

Secondary boycotts were the subject of debate on over thirty occasions in the two houses of Congress as shown by the index to the Legislative History, Page XXIII.

The consumer picketing which is the subject of this case, was specifically considered often and at length by the Congress and was one of the largest "loopholes" in the Taft-Hartley Act, which Congress sought to close.

Significantly, the court below has adopted an interpretation of the statutory language which is entirely different from that accorded the language by both the proponents and opponents.

Thus, Senator John L. McClellan, a proponent of the legislation, said:

> " * * * In other words, if there were a strike in a certain plant, and I, as a merchant, handled the products of that plant, under the amendment the union could not use picketing to try to compel me to cease handling the products of the plant where the labor dispute is under way. * * * " (II Legis. Hist. 1193(3).)

Senator Wayne L. Morse, member of the Senate Committee on Labor and Public Welfare, an opponent of the legislation, said:

"* * * This bill does not stop with threats and with illegalizing the hot cargo agreement. It also makes it illegal for a union to 'coerce, or restrain.' This prohibits consumer picketing. What is consumer picketing? A shoe manufacturer sells his product through a department store. The employees of the shoe manufacturer go on strike for higher wages. The employees, in addition to picketing the manufacturer, also picket at the premises of the department store with a sign saying 'Do not buy X shoes'. This is consumer picketing, an appeal to the public not to buy the product of a struck manufacturer. * * *" (II Legis. Hist. 1426(3))

Senator Barry M. Goldwater, member of the Senate Committee on Labor and Public Welfare, and a proponent of the legislation, said in two extensions of his remarks in the Congressional Record:

"* * * But let me give you a variation that is not prohibited under the Taft-Hartley Act.

"Take the same set of facts. The union has a dispute with Employer A. Employer A does business with Employer B. Instead of throwing a picket line around Employer B, the business agent of the union goes directly to Employer B himself in his office and says, 'Unless you stop doing business with Employer A, we will throw a picket line around your plant.' That's not illegal under present law, because there the inducement to cease doing business is made directly upon the secondary employer and not through his employees. Now that would be illegal under the new bill.

"Question: That was a loophole in the old law?

"Answer: Right." (II Legis. Hist. 1829(1))

"* * * This new amendment in the conference

> report also makes secondary consumer boycotts illegal subject to certain narrow and limited exceptions. Thus, under previous law a labor union having a dispute with the producer, company A, could lawfully picket the distributor, company B, who carried company A's products for sale, for the purpose of inducing consumers not to patronize company B, subject to certain restrictions imposed by the Board. Under the new amendment, such picketing becomes illegal, but the union is permitted to engage in publicity—by means other than picketing—truthfully advising the public that company B the distributor—the secondary employer—is distributing goods produced by Company A, the producer with whom such labor union has a primary dispute. * * *" (II Legis. Hist. 1857(2))

Senator Paul Douglas, an opponent of the legislation, did not construe the effect of the language any differently, II Legis. Hist. 1833 (1).

At no point in the debates was it even suggested that the *effect* of the picketing need be assessed before its *legality* could be determined.

On the contrary, opponents and proponents alike were of the opinion that the language of the amendment would require the Board to look to two factors only, objects and means. If (1) the object was to compel the secondary employer to cease doing business with the primary employer, and (2) the means used was picketing or other threats, coercion or restraint, save only publicity other than picketing, the conduct was unlawful, and the Board was not only to order the union to cease and desist from it, Section 10 (c), but

to ask the district court to enjoin it, Section 10 (1) (Pertinent portions are set forth in Appendix A of this brief).

Thus Representative John A. Lafore, Jr., a member of the House Committee on Education and Labor, said:

> "* * * Another similar insidious variety is secondary consumer boycott. Under the present law a union can apparently picket the customer entrances of a retail store which is carrying a product manufactured by a company with which a union has a primary dispute. Similarly a union can organize a consumer or customer boycott against a distributing firm merely because that company advertises on a radio or television station or in a newspaper with which the union has a primary dispute. Sponsors of radio and TV programs and advertisers in newspapers are threatened with economic pressure and a loss of business by the union unless they discontinue their advertising. These are examples of secondary or consumer boycotts, a potent form of economic pressure that are intended to be made unlawful by the language of my bill." (II Legis. Hist. 1471(1)(2))

The decision of the Court of Appeals in its reading of the statutory language is in conflict with the reading of the language by the proponents and opponents in Congress, the agency charged with the administration of the Act, and also with decisions of the district courts. *Penello v. Teamsters, Local 557* (D.C., Md., 1962) 45 Labor Cases ¶ 17,657; *Cuneo v. Carpenters Local No. 15* (D.C., N.J., 1961) 197 F.Supp. 662.

B. The Court of Appeals Overlooked Significant Statutory Language

The Court of Appeals failed to take any cognizance at all of the proviso to subsection (B) which reads:

> "Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

So much attention has been focused on the last proviso to section 8(b)(4), which specifically refers to consumers, that the proviso to subsection (B) which specifically refers to picketing, has been largely passed over, but the proviso to subsection (B) is dispositive of the question of whether or not peaceful picketing, without more, is comprised within the terms, "threaten, coerce or restrain," and disposes of that question in the affirmative. The proviso makes crystal clear that secondary strikes and secondary picketing, *secondary only*, fall within the ban of the statute.

The language of section 8(b)(ii)(B) without the proviso was originally embodied in S.B. 1384 introduced by Senator McClellan, I Legis. History 327, 328. In the original Landrum-Griffin Bill, H.R. 8400, the same text appeared without the proviso, I Legis. Hist. 619, 681. The proviso was added by the House and Senate conferees. Mr. Griffin, as one of the House conferees, submitted a preliminary conference report including a table entitled, "Summary analysis of conference agreement as to Title VII — Taft-Hartley amendments." This table included the following:

III. Other secondary boycotts	*House Bill (Landrum-Griffin)*	*Senate Bill (Kennedy-Ervin)*	*Conference Agreement*
	• • •	• • •	• • •
	4. Prohibits secondary customer picketing at retail store which happens to sell product produced by manufacturer with whom union has dispute.	——do——	Adopt House provision with clarification that other forms of publicity are not prohibited; also clarification that picketing at primary site is not secondary boycott. II Legis. Hist. p. 1712.

Mr. Frank Thompson, Jr., of New Jersey, a member of the conference committee, speaking in support of the conference report, said in part:

> "Employees will also be entitled to publicize, without picketing, the fact that a wholesaler or retailer sells goods of a company involved in a labor dispute." II Legis. Hist. p. 1720.

Similarly, Mr. Roland V. Libonati of Illinois, speaking against the conference report, said:

> "Unions can only advertise against an establishment selling unfair goods. Picket lines are illegal where there is no primary dispute." II Legis. Hist. p. 1734.

Had "picketing" not been understood to be included in the terms "threaten, coerce or restrain," this proviso to subsection (B) would have been meaningless. Picketing which is not peaceful is unlawful whether at a primary or secondary site. Picketing "not otherwise unlawful" is necessarily peaceful. The proviso draws peaceful *primary* picketing from the ban of the

statute, leaving *secondary* picketing, however peaceful, banned.

C. The Decision Will Affect the Construction and Application of All of Section 8(b)(4)(ii)

The application to subsections (A), (C) and (D) of the court's holding that the effect of the picketing must be considered to find a violation of § 8(b)(4)(ii) would be inevitable, if the decision were allowed to stand, and would lead to absurd results.

If peaceful picketing is not included within the words "threaten, coerce, or restrain," unless the picketing adversely affects the secondary employer's business, it must follow that section 8(b)(4)(ii)(A) is not violated by picketing where an object thereof is forcing or requiring any employer or self-employed person to join any labor or employer organization, unless the self-employed person or employer actually joins the labor or employer organization or can prove economic injury from the picketing.

Likewise, picketing where an object thereof is (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees when another labor organization has been certified as the representative of such employees, would not be unlawful unless the employer yielded to the prohibited objective or suffered economic hardship as a result of the picketing..

Similarly, in the case of picketing (D) to force or require an employer to assign particular work to employees in a particular labor organization, the Board

would have to assess the effect of the picketing before it could order it stopped.

Thus the decision of the court of appeals affects not only the interpretation, application and administration of subsection (B) of section 8(b)(4)(ii), but all of 8(b)(4)(ii), because, what the court has held is, that conduct, unlawful intent and unlawful objective do not equal an unfair labor practice, but that the actual effect of the conduct must be assessed to determine whether or not the conduct constitutes a threat, coercion or restraint.

Section 8(b)(4)(ii) has never been so construed.

Such a reading of Section 8(b)(4)(ii) is inconsistent with the reading given by the Board and the courts, including the United States Court of Appeals for the District of Columbia. *Sheet Metal Workers v. NLRB* (CA-D.C., 1961) 293 F.2d 141; *NLRB v. United Construction Workers* (CA-4, 1952) 198 F.2d 391; *Printing Specialties & Paper Converters Union v. LeBaron* (CA-9, 1948) 171 F.2d 331; *NLRB v. Garment Workers Local 155* (CA-2, 1959) 267 F.2d 916. In the last cited case the Court of Appeals for the Second Circuit said of Section 8(b)(4)(i) in part:

> "It has long been recognized that picketing in labor disputes often contains elements both of persuasion and of coercion. *Insofar as picketing is free from coercive intent or effect, Congress has declared that it shall not be the basis for a finding of an unfair labor practice;* and perhaps the declaration is necessary, if the Act is to avoid the First Amendment's imperative. 29 U.S.C.A. § 158(c); see *International Brotherhood of Electrical Work-*

> *ers, Local 501, AFL v. N.L.R.B.*, 341 U.S. 694, 71 S.Ct. 954, 95 L.Ed. 1299. Nor is picketing unfair, under the Act, merely because it is shown to be coercive in effect; the tests set forth in the Act must be met. See *Garner v. Teamsters, etc.*, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228. To render the union's activities illegal under § 8(b)(4)(C), two elements must concur: the labor organization must be inducing employees to strike or to engage in a concerted refusal to work; and an object of the union's activities must be its recognition by the employer as the representative of its employees, where another union has been certified by the Board." (267 F.2d 919) (Emphasis supplied)

In the above cited cases evidence of the *effect* of picketing has been considered for the purpose of shedding light on the *intent* of the picketing, but the effect has never been considered an *element* of the unfair practice.

In the instant case the *intent* of the picketing is not in dispute. Exhibit 6, the notice to store manager and store employees made the intent of the picketing as clear as it could be made, by stating in part:

> "As noted above, our information indicates that you are presently selling Washington State Apples. If, however, this information is not correct and you are selling apples exclusively from another state, please notify the undersigned and we will see that the pickets are transferred to another store where Washington State Apples are actually being sold." (R. 33-34)

No more direct or lucid statement could be made that the store would be picketed until it stopped selling the apples.

D. The Court Was Beguiled by Irrelevancies

The court's observation that it is Tree Fruits, not Safeway, which is the charging party points to an academic and theoretical approach to the issue, rather than the practical approach sought by the Congress.

Section 10(b) of the Act does not require that the charge be filed by the real party in interest, but a charge may be filed by anyone. The Rules and Regulations of the Board, section 102.9, provide:

> "A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person."

Were it incumbent on retailers to file charges against consumer boycott activity, the time, expense, trouble and danger of involving itself in someone's else's quarrel would render submission the only practical course, and the Congressional intent of prohibiting such involvement would be thwarted.

E. The Court's Constitutional Reservations Would Severely Hamper Congress in Keeping the Channels of Interstate Commerce Open

If the Board's reading of the statutory language raises constitutional questions, those questions should be squarely faced. That the court misconstrued *Hughes v. Superior Court*, 339 U.S. 460, and *Brotherhood of Teamsters v. Vogt*, 354 U.S. 284 (1957) has been pointed out by the Board in its Petition at pages 13-14.

The court, however, also misconstrued the statutory history with reference to the relation of the statutory language and the constitutional requirement of free speech. The court quoted Mr. Griffin's remarks on free

speech in the course of its opinion, but quoted them out of context. (See App. A to Board's Petition, p. 26.) The colloquies from which the court extracted its excerpts are reprinted in full in Appendix B to this brief. They make it abundantly clear that all secondary picketing was intended to be banned and all non-picketing avenues of publicity were to be left open under the terms of the second proviso to Section 8(b)(4).

The court attempted to distinguish *Bakery & Pastry Drivers & Helpers Local v. Wohl*, 315 U.S. 769 (1942) by pointing out that in the instant case the Union was appealing to members of the public at large and sought to prevent "its picketing from having the customary 'signal' effect on employees" (Appendix A to Board's Petition, p. 28).

The court overlooked the difference between clauses (i) and (ii). Clause (i) makes it an unfair labor practice to induce or encourage *any individual employed* by any person, etc. for the four proscribed purposes. Clause (ii) makes it an unfair labor practice to threaten, coerce, or restrain *any person* for the four proscribed purposes. Thus the "signal" need not even be directed at employees to run afoul of clause (ii). Flashing the *picket* signal *at any person*, other than a *primary* employer, for any of the four proscribed objectives is prohibited. The effect or intended effect on *employees* is irrelevant to a charge under clause (ii).

The fact that picket lines have been used by others than labor organizations is certainly irrelevant. The statute does not proscribe or affect picketing generally, or subject it to criminal penalties under any circum-

stance. The statute merely declares it to be an unfair labor practice for a *labor organization* to threaten, coerce or restrain *any person* for four proscribed objectives, provided that *primary* picketing, not otherwise unlawful, is not rendered unlawful by this section.

To hold that Congress cannot constitutionally so restrict the use of the picket "signal," is novel doctrine indeed.

CONCLUSION

In view of the far-reaching consequences of allowing the decision of the court below to stand, and the uncertainty as to the law it will engender for labor, management and the enforcing agency, as well as the conflict between circuits which will arise if the Court of Appeals for the Fifth Circuit enforces the Board's order in *Perfection Mattress & Spring Co.*, 129 NLRB 1014, pending on petitions for review and enforcement in that court, Nos. 18748, 19080, 19162, the Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

(Title 29, U.S.C.A. § 158 (b))

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order of certification of the Board determining the bargaining representative for employees performing such work;

"*Provided,* That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engage in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport

any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

(Title 29, U.S.C.A. § 160 (b), (c) and (l))

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

"(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such a person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: * * *

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 158 (b) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after

such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. * * * "

APPENDIX B

(II Legis. Hist. 1615 (1-3)

Mr. Brown of Ohio —

Mr. Chairman, I should like to propound a question either to Mr. Griffin or to Mr. Landrum, the authors of one of the bills, relative to secondary boycotts. If I understood their testimony before the Committee on Rules correctly, the authors of this bill stated their bill will deal properly with secondary boycotts.

My question concerns the picketing of customer entrances to retail stores selling goods manufactured by a concern under strike. Would that situation be prohibited under the gentleman's bill?

Mr. Griffin —

Let us take for example the case that the President talked about in his recent radio address. A few newspapers reported that the secondary boycott described by the President would be prohibited under the present act. It will be recalled that the case involved a dispute with a company that manufactured furniture. Let us understand that we are not considering, as I understand your question, the right to picket at the manufacturing plant where the dispute exists.

Mr. Brown of Ohio —

That is right. We are looking only at the problem of picketing at a retail store where the furniture is sold.

Mr. Griffin —

Then, we are not talking about picketing at the place of the primary dispute. We are concerned about

picketing at a store where the furniture is sold. Under the present law, if the picketing happens to be at the employee entrance so that clearly the purpose of the picketing is to induce the employees of the secondary employer not to handle the products of the primary employer, the boycott could be enjoined.

However, if the picketing happened to be around at the customer entrance, and if the purpose of the picketing were to coerce the employer not to handle those goods, then under the present law because of technical interpretations, the boycott would not be covered.

Mr. Brown of Ohio —

In other words, the Taft-Hartley Act does not cover such a situation now?

Mr. Griffin—The way it has been interpreted.

Mr. Brown—But the Griffin-Landrum bill would?

Mr. Griffin—Our bill would; that it right. If the purpose of the picketing is to coerce or to restrain the employer of that second establishment, to get him not to do business with the manufacturer—then such a boycott could be stopped.

Mr. Brown of Ohio—Not to sell the goods of some concern that is on strike. Would that same rule apply to the picketing at the customer entrances, for instance, of plumbing shops, or newspapers that might run the advertising of these concerns, or radio stations that might carry their program?

Mr. Griffin—Of course, this bill and any other bill is limited by the constitutional right of free speech. If the purpose of the picketing is to coerce the retailer

not to do business with the manufacturer, whether it is plumbing—

Mr. Brown of Ohio—Advertising.

Mr. Griffin—Advertising, or anything else, it would be covered by our bill. It is not covered now. * * *

Mr. Gubser—Mr. Chairman, I should like to ask the coauthor of the Landrum-Griffin bill a question which follows along the lines of the questioning of the gentleman from Ohio (Mr. Brown). Specifically, under the Griffin-Landrum bill, let us say there is a picket in front of a business establishment, and he carries a sign, "This establishment is not affiliated with the AFL." Could that be accomplished legally under the Griffin-Landrum bill?

Mr. Griffin—*First of all I assume the gentleman is talking about primary picketing. We are not talking about a secondary boycott in this situation?*

Mr. Gubser—That is right.

Mr. Griffin — We must look to the purpose of the picketing in the particular situation. Under H.R. 8400, looking at page 66, it provides that where an object of the picketing is to force or require employees to accept or select such labor organization as their bargaining agent, then the picketing in that case would be illegal unless the union can show that at least 3 out of 10 of the employees are interested in the union. This is subject, however, to the constitutional right of free speech. *Unless the picketing is for the coercive purpose indicated it would not be affected by this language.* In other words, whether it is the handing out handbills or put-

ting an ad in the paper or picketing, if it is done in such a way so as clearly to be nothing more than an exercise of free speech, then the provision would not be violated. (Emphasis supplied)